HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2)(b)

Description of Case.

A.O. No. 925 of 2001

(Old No. 643 of 1988)

Mishri Lal

Vs.

Shiv Kumar Gupta & others

Approved for Reporting.

Not Approved for Reporting

Date of decision 15.10.2004.

Initials of Judge

Reserved

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 925 of 2001
(Old No. 643/1988)

Mishri Lal ..... Appellant

Versus

Shiv Kumar Gupta & others ..... Respondents

Dated: October 15, 2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

The present appeal has been filed against the judgment and order dated 25.4.1988 passed by the Motor Accident Claims Tribunal, Chamoli.

Briefly stated the facts giving rise to the present appeal are that the appellant has filed a claim petition before the Motor Accident Claims Tribunal, Chamoli for grant of compensation on account of death of Sri Sukha in a motor vehicle accident on 31.7.1986 at 12.00 noon near Hanuman Chatti, District Chamoli Garhwal, involving Bus No. HRX 2791. The petitioner alleged that the accident had taken place due to rash and negligent driving by the bus driver.

The opposite parties contested the claim petition. The opposite parties no.1 and 2, i.e. the driver of the bus and the owner of the bus have denied that the accident took place due to

rash and negligent driving of the bus. They have contended that there was raining and the road was slippery due to which the bus skidded and fell down into the gorge. The opposite party no.3 the New India Assurance Co. has stated in its written statement that at the time of accident conductor of the bus was driving the bus who had no valid driving licence and as such the insurance company is not liable to pay compensation.

On the pleadings of the parties the following issues were framed by the Claims Tribunal:

1. Whether the deceased was travelling in the vehicle and her death was caused in the accident ?
2. What were the earnings of the deceased ?
3. Whether the applicant is entitled to claim any amount of compensation as alleged ?
4. Whether the oil was on the road and the road was slippery ? If so, was the driver not negligent as alleged?
5. a) Whether the conductor was driving the vehicle?
   b) Whether the vehicle was being run on the road without permit for this road?
   c) If so, is Insurance Company not liable?
6. To what amount of compensation and against which of the defendants, the applicant is entitled?
7. Whether the petition is not maintainable, and is not properly presented?

In reply of issues no.1 and 4 the Claims Tribunal has held that the accident had taken place due to rash and negligent driving by the driver of the bus. In reply of issues no. 5 (a), (b) and (c) the claims Tribunal has held that the owner of the bus had valid road permit and the insurance company is liable to pay compensation. In reply of issue no.7 the Claims Tribunal

has held that the Claim petition was properly presented. While deciding issues no.2, 3 and 6, the Claim Tribunal has held that the petitioner had already received Rs.13,750/- as ex gratia compensation and he has made contradictory statement regarding profession of the deceased and his income, hence the petitioner is not entitled to get any compensation and the claim petition was dismissed accordingly.

Feeling aggrieved the present appeal has been filed by Sri Baboo mainly on the grounds that ex-gratia payment made to the claimant cannot be deducted from the award of compensation under Motor Vehicles Act, and further that if the income of the deceased had not been specifically pleaded in the petition the Tribunal itself was statutorily bound to pay just compensation.

So far as the findings of the Claims Tribunal regarding rash and negligent driving of the bus are concerned the same are based on the evidence on record and none has challenged the same in the appeal.

So far as the earnings of the deceased are concerned, Sri Mishri Lal P.W.2 has stated on oath that his father was doing work as clay potter and was earning Rs.2,000/- per month. The claims Tribunal has not relied upon the statement of the petitioner merely on the ground that in the petition the petitioner has shown the profession of the deceased as agriculture and in his statement on oath he has stated the profession of the deceased as agriculture. The Claims Tribunal has held that the evidence of the petitioner is uncorroborated and no compensation can be awarded to the petitioner.

I am not inclined to accept the view taken by the Claims Tribunal that no pecuniary loss is caused to the petitioners on

account of death of the father of the petitioner. In the Claim petition although the petitioner has mentioned the petitioner of the deceased as agriculture labourer but in his statement on oath he has stated that the deceased was clay potter and was earning Rs.2,000/- per month. In my opinion this does not made any difference. In India a clay potter also works as agriculture labourer in the crop season and works as potter in few months in the year. Even if the statement of the petitioner regarding the profession of the deceased is contradictory, even then it is clear that the deceased was either a clay potter or an agriculture and was earning something.

It is an established principle of law that if a petitioner has not specifically pleaded for the grant of certain amount of compensation, even then the Tribunal itself is statutorily bound to pay just compensation and for that it has to examine facts, evidence and law, as held by the Apex Court in [2003 (2) SCC 274, Nagappa vs. Gurudayal Singh & others. The Apex Court has observed as under:

"7. *Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is – it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful not unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act.*

Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso, to sub-section , (1), all the legal representatives of the deceased who have no joined as the claimants are to be impleaded as respondents to the application for compensation. The other important part of the said section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act". Hence, the Claims Tribunal in an appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

The Apex Court in Sheikhupura Transport Co. Ltd. V. Northern India Transport Insurance Co. (1971) 1 SCC 785 has held as under:

"6. *Under Section 110-B of the Motor Vehicles Act, 1939 the tribunal is required to fix such compensation which appears to it to be just. The power given to the tribunal in the matter of fixing compensation under the provision is wide. Even if we assume (we do not purpose to decide that question in this case)*

that compensation under that provision has to be fixed on the same basis as is required to be done under Fatal Accidents Act, 1855 (Act 13 of 1855), the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources come to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained."

Thus it is evidently clear that the learned Claims Tribunal has not determined the compensation on account of the death of Halku Prajapati, and in view of the settled principle of law he has wrongly rejected the claim petition.

If the deceased was working simply as a none skilled labourer he must have earning at least Rs.500/- per month. The petitioner is the son of the deceased Halku Prajapati. He must have also incurred some expenses in the last rites of the deceased. In my opinion a consolidated sum of Rs.80,000/- as compensation on all these counts would be just and proper compensation.

In this case an ex-gratia payment of Rs.13,500/- has been made to the petitioner by the State and the Insurance Company cannot claim deduction of this amount from the award of compensation. The amount paid to the dependent of the deceased under Motor Vehicles Act is statutory while the amount paid to the petitioner by the State as ex-gratia is obligatory and was paid under public welfare and Social

security scheme of the Government and as such the ex-gratia payment cannot be deducted from the amount of compensation awarded by the Motor Accident Claims Tribunal, as held by the Apex court in (2002) 6 SCC 281, United India Insurance co. Ltd.. vs. Patricia Jean Mahajan and others. The Apex Court has observed as under:

36. *We are in full agreement with the observations made in the case of Helen Rebello*[11] *that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for*

example some allowance paid to the children, and Mrs Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr Mahajan. If the proposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, maybe on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.

37. *We therefore, do not allow any deduction as pressed by the Insurance Company on account of receipts of insurance policy and social security benefits received by the claimants.*

In the circumstances of the case I find that the Claims Tribunal has taken a conservative view regarding calculation of the amount of award. The appeal, therefore, deserves to be allowed.

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37. *We therefore, do not allow any deduction as pressed by the Insurance Company on account of receipts of insurance policy and social security benefits received by the claimants.*

In the circumstances of the case I find that the Claims Tribunal has taken a narrow view regarding calculation of the amount of award. The appeal, therefore, deserves to be allowed.

Consequently the appeal is partly allowed. The petitioner appellant is awarded a sum of Rs.80,000/- as compensation along with pendente lite and future interest at the rate of 9% per annum. There will be no order as to costs.

(Rajesh Tandon J.)

October 15, 2004
*Dhyani